

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
GREENVILLE DIVISION**

ELTON HARPER, JR.

PLAINTIFF

v.

No. 4:22CV142-RP

CIRCUIT COURT OF WASHINGTON COUNTY, ET AL.

DEFENDANTS

**ORDER DISMISSING CASE WITHOUT PREJUDICE
UNDER THE HOLDING OF *HECK V. HUMPHREY***

On October 12, 2022, the court ordered [9] the plaintiff to show cause why this case should not be dismissed under the holding in *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994). In this case filed under 42 U.S.C. § 1983, the plaintiff does not challenge the conditions of his confinement, as required under that section; he instead challenges the fact and duration of his confinement, a claim which he should have brought through a *habeas corpus* petition under 28 U.S.C. § 2254. A claim under § 1983 involving a conviction or sentence does not accrue until that conviction or sentence has been invalidated. *Heck* at 489-90.

The court set a 21-day deadline for the plaintiff to show that his conviction or sentence has been “reversed, expunged, invalidated or impugned” by a writ of *habeas corpus*, which would make civil claims arising out of his criminal conviction ripe for proceeding in a case filed under 42 U.S.C. § 1983. The plaintiff filed a 199-page response [13] to the show cause order; his response consisted mostly of pleadings and motions filed in various state and federal proceedings. The response did not, however, show that his convictions or sentences have been invalidated. As such, the plaintiff has not shown cause, as directed, and the instant case is **DISMISSED** for failure to state a claim upon which relief could be granted, counting as a “strike” under 28 U.S.C. § 1915(g). This dismissal is without

prejudice for the plaintiff to seek relief through a petition for a writ of *habeas corpus* under 28 U.S.C. § 2254.

SO ORDERED, this, the 7th day of November, 2022.

/s/ Roy Percy
UNITED STATES MAGISTRATE JUDGE